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# SEALED

8  
9 IN THE UNITED STATES DISTRICT COURT  
10  
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JULIO CESAR RECINOS-SORTO,

15 Defendant.

CASE NO. 1:21-MJ-00049 EPG

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: June 26, 2022

TIME: 2:00 p.m.

COURT: Hon. Sheila K. Oberto

16  
17 This case was set for a preliminary hearing on June 26, 2022<sup>1</sup>. The parties agree and stipulate to  
18 continue the preliminary hearing until July 26, 2022. Defense counsel has continued to be engaged in  
19 discussions and further investigation, and needs additional time to conclude that process. Since the last  
20 continuance, there have been issues with visitation with defendant due to moving and other COVID-  
21 related isolation issues. Additionally, the parties agreed to this stipulation prior to July 26, 2022, and  
22 intended to file it, but it appears by oversight, it was not filed. As such, the parties are asking that the  
23 Court issue the Order setting the preliminary hearing for July 26, 2022 and order that time be excluded  
24 from the speedy trial and preliminary hearing timelines.

25 On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the  
26 courthouse in June 2021, recognized the continued public health emergency, continued to authorize  
27

28 <sup>1</sup> June 26, 2022 is a Sunday. The parties mistakenly requested a preliminary hearing date on a  
Sunday.

1 video or teleconference court appearances in various cases, and noted the court's continued ability under  
2 the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and  
3 other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652,  
4 which "authorized the use of videoconference and teleconference technology in certain criminal  
5 proceedings under the in the Eastern District of California." This and previous General Orders highlight  
6 and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c)  
7 and (d), a preliminary hearing must be held "no later than 14 days after initial appearance if the  
8 defendant is in custody," unless the defendant consents and there is a "showing of good cause", or if the  
9 defendant does not consent and there is a "showing that extraordinary circumstances exist and justice  
10 requires the delay." Here, the defendant consents and there is good cause.

11       Although the General Orders address the district-wide health concern, the Supreme Court has  
12 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
13 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
14 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
15 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
16 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
17 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally  
18 or in writing").

19       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
20 and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-  
21 of-justice continuances are excludable only if "the judge granted such continuance on the basis of his  
22 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
23 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
24 unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
25 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
26 and the defendant in a speedy trial." *Id.*

27       The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code  
28 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,

1 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
2 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
3 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
4 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
5 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
6 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
7 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

8 In light of the societal context created by the foregoing, this Court should consider the following  
9 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
10 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date  
11 for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
12 pretrial continuance must be "specifically limited in time").

13 **STIPULATION**

14 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
15 through defendant's counsel of record, hereby stipulate as follows:

16 1. By previous order, this matter was set for preliminary hearing on June 26, 2022.

17 2. By this stipulation, defendant now moves to continue the preliminary hearing until **July**  
18 **26, 2022, at 2:00 p.m.** and to exclude time between June 26, 2022, and July 26, 2022, under Local Code  
19 T4.

20 3. The parties agree and stipulate, and request that the Court find the following:

21 a) The parties are discussing and conducting further investigation into pre-  
22 indictment matters, and need additional time to conclude.

23 b) Counsel for defendant desires additional time to consult with his client, conduct  
24 further investigation, and discuss charges with the government. This has been delayed by the  
25 defendant moving to a different jail and other COVID-related isolation issues.

26 c) Counsel for defendant believes that failure to grant the above-requested  
27 continuance would deny him the reasonable time necessary for effective preparation, taking into  
28 account the exercise of due diligence.

1                   d)     The government does not object to the continuance.

2                   e)     Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later  
3 than 14 days after initial appearance if the defendant is in custody,” unless the defendant  
4 consents and there is a “showing of good cause”. Here, the defendant consents and there is good  
5 cause as set forth herein.

6                   f)     Based on the above-stated findings, the ends of justice served by continuing the  
7 case as requested outweigh the interest of the public and the defendant in an indictment or trial  
8 within the original dates prescribed by the Speedy Trial Act.

9                   g)     For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
10 et seq., within which an indictment must be filed and within which a trial must commence, the  
11 time period of June 26, 2022 to July 26, 2022, inclusive, is deemed excludable pursuant to 18  
12 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by  
13 the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served  
14 by taking such action outweigh the best interest of the public and the defendant in a speedy  
15 indictment/trial.

16       4.     Nothing in this stipulation and order shall preclude a finding that other provisions of the  
17 Speedy Trial Act dictate that additional time periods are excludable from the period within which an  
18 indictment must be filed and a trial must commence.

19                   IT IS SO STIPULATED.

20  
21                   Dated: July 14, 2022

PHILLIP A. TALBERT  
United States Attorney

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23                   \_\_\_\_\_  
24                   /s/ KIMBERLY A. SANCHEZ  
25                   KIMBERLY A. SANCHEZ  
26                   Assistant United States Attorney  
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1 Dated: July 14, 2022

/s/ MIKE McKNEELY  
MIKE McKNEELY  
Counsel for Defendant  
JULIO CESAR RECINOS-  
SORTO  
/s/ MARK GOLDROSEN

4 Dated: July 14, 2022

5 MARK GOLDROSEN  
6 Counsel for Defendant  
7 JULIO CESAR RECINOS-  
8 SORTO

9 **ORDER**

10 IT IS SO ORDERED that the status conference is continued from June 26, 2022, to **July 26, 2022,**  
11 **at 2:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** The parties represent that the agreement  
12 to exclude time was made on or about June 26, 2022, but this stipulation was erroneously not filed at that  
13 time. Therefore, the Court finds exclusion of time from June 26, 2022 appropriate, and time is excluded  
14 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

15 IT IS SO ORDERED.

16 Dated: July 18, 2022

17 /s/ Barbara A. McAuliffe

18 UNITED STATES MAGISTRATE JUDGE